

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

THOMAS E. MERTZ,	:	CIVIL ACTION - LAW
Plaintiff	:	
v.	:	
	:	<u>JURY TRIAL DEMANDED</u>
DONZI MARINE, INC. and	:	
AMERICAN MARINE HOLDINGS,	:	
INC., in its own right and d/b/a	:	
DONZI MARINE,	:	
Defendants and	:	
Third-Party Plaintiffs	:	THE HONORABLE MAURICE B. COHILL, JR.
v.	:	
	:	
THE BOAT STORE	:	
Third-Party Defendant	:	NO.: 1:04-cv-0055

**REPLY BRIEF OF DEFENDANT AND THIRD-PARTY PLAINTIFFS,
DONZI MARINE, INC. AND AMERICAN MARINE HOLDINGS, INC.,
IN RELATION TO THE RESPONSE OF THIRD-PARTY DEFENDANT,
THE BOAT STORE, TO THE MOTION FOR RECONSIDERATION**

Defendants and Third-Party Plaintiffs, Donzi Marine, Inc. and American Marine Holdings, Inc. (hereinafter collectively “Donzi Marine”), through its attorneys at Sweeney & Sheehan, P.C., hereby submit the following Reply Brief to Third-Party Defendant’s, The Boat Store, Response to the Motion for Reconsideration of this Court’s Order denying without Prejudice Donzi Marine’s Motion to Amend the caption of the Complaint to change the name of the Third-Party Defendant from The Boat Store to Szczesny Enterprises, Inc., d/b/a The Boat Store.

On June 28, 2007, Gregory M. Szczesny, President of The Boat Store, sent correspondence to this Honorable Court objecting to Donzi Marine’s Motion for Reconsideration which sought to amend the name of the Third-Party Defendant from The Boat Store to Szczesny Enterprises, Inc., d/b/a The Boat Store. Mr. Szczesny indicated in that

correspondence that this Court should not grant the Motion for Reconsideration because Szczesny Enterprises has no viable assets and has been "abolished" pursuant to bankruptcy proceedings.

In response, it is clear through Mr. Szczesny's correspondence of June 28, 2007 that he is not disputing that Szczesny Enterprises, Inc. did and does business as The Boat Store.

Given that Mr. Szczesny has not provided this Court with any evidence that Szczesny Enterprises, Inc. did business as The Boat Store, Donzi Marine would respectfully request that this Court enter an Order granting its Motion for Reconsideration and amending the caption to identify the Third-Party Defendant as Szczesny Enterprises, Inc., d/b/a The Boat Store.

In addition, Mr. Szczesny alleges that Szczesny Enterprises has been abolished and it has no viable assets as of the current time due to the bankruptcy. However, it should be noted that the bankruptcy documents attached to Donzi Marine's Motion relate solely to the personal bankruptcy of Mr. Gregory M. Szczesny and his spouse and not the corporate entity of Szczesny Enterprises, Inc., d/b/a The Boat Store. It is further clear that Szczesny Enterprises, Inc. is still an active corporation within the Commonwealth of Pennsylvania and that Mr. Szczesny's personal bankruptcy had no effect upon the viability of this corporation.

It should also be noted that Mr. Szczesny will suffer no prejudice as a result of this Court entering an Order amending the caption to replace "The Boat Store" with Szczesny Enterprises, Inc., d/b/a The Boat Store as the Third-Party Defendant. Clearly, Mr. Szczesny, as the president of Szczesny Enterprises, Inc., had knowledge of this lawsuit. In fact, he actively participated in this lawsuit from its initiation through the current time. This participation has included responding to the Complaint and actively participating in the discovery process, including his own deposition. Mr. Szczesny's allegation that he cannot

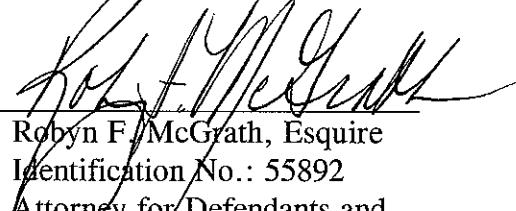
afford legal counsel does not in any way represent prejudice that would relate to an amendment of the pleadings. The relevant issue before this Court is whether Szczesny Enterprises, Inc. does and did business as The Boat Store. Pursuant to the exhibits attached to the initial Motion to Amend the Complaint and the Motion for Reconsideration, as well as Mr. Szczesny's recent correspondence, it is clear that Szczesny Enterprises, Inc. does and did business as The Boat Store. Based on the foregoing, Donzi Marine respectfully requests that this Court enter the Order which was attached to its Motion for Reconsideration.

WHEREFORE, the Defendants and Third-Party Plaintiffs, Donzi Marine, Inc. and American Marine Holdings, Inc., respectfully request that this Honorable Court enter an Order granting its Motion for Reconsideration and amend the Third-Party Complaint to change the name of the Third-Party Defendant from The Boat Store to Szczesny Enterprises, Inc., d/b/a The Boat Store.

Respectfully submitted,

SWEENEY & SHEEHAN

BY:



Robyn F. McGrath, Esquire
Identification No.: 55892
Attorney for Defendants and
Third-Party Plaintiffs,
Donzi Marine, Inc. and American
Marine Holdings, Inc.

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Date: July 6, 2007

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THOMAS E. MERTZ, Plaintiff	:	CIVIL ACTION - LAW
v.	:	<u>JURY TRIAL DEMANDED</u>
DONZI MARINE, INC. and AMERICAN MARINE HOLDINGS, INC., in its own right and d/b/a DONZI MARINE,	:	
Defendants and Third-Party Plaintiffs	:	THE HONORABLE MAURICE B. COHILL, JR.
v.	:	
THE BOAT STORE	:	
Third-Party Defendant	:	NO.: 1:04-cv-0055

CERTIFICATION OF SERVICE

I hereby certify that the following interested parties were served with a true and correct copy of the **Reply Brief of Defendant and Third-party Plaintiffs, Donzi Marine, Inc. and American Marine Holdings, Inc., In Relation to the Response of Third-party Defendant, The Boat Store, to the Motion for Reconsideration** in the above-captioned matter via electronic and U.S. Postal Service, First Class Mail on July 6, 2007:

Gregory Szczesny
THE BOAT STORE
5676 Luna Lane
Erie, PA 16506-4742

The Honorable Maurice B. Cohill, Jr.
**U.S. DISTRICT COURT FOR THE
WESTERN DISTRICT OF
PENNSYLVANIA**
State Street and South Park Row
Erie, Pennsylvania 16501

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SWEENEY & SHEEHAN

By: 

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Third-Party Plaintiffs,
Donzi Marine, Inc. and
American Marine Holdings, Inc.